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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JAMES W. NEWTON,
Petitioner,
v.
THE UNITED STATES OF AMERICA, et. al.
Respondents.

BRIEF OF RESPONDENT REPUBLIC OF COLOMBIA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT E. GOODFRIEND, P.C.
Attorney of Record
AKIN, GUMP, STRAUSS, HAUER & FELD
4100 FIRST CITY CENTER
1700 PACIFIC AVENUE
DALLAS, TEXAS 75201-4618
(214) 969-2800

Attorneys for Republic of Colombia

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STATEMENT OF THE CASE

In February of 1981, one Edward Uhart purchased the Great Monstrance of Santa Clara (the "Monstrance") in Colombia, South America. The Monstrance, a three-foot high, solid gold, jewel-studded liturgical object, is used in the Catholic Mass to display the host. See page 31r herein. The Monstrance, which had been commissioned in the eighteenth century by the order of the Sisters of Santa Clara in Tunja, Colombia, and had been displayed at the convent for nearly 200 years, was sold by the Sisters on condition that it remain in a Colombian museum. (Appendix 5a.) However, shortly after acquiring the Monstrance, Uhart took the Monstrance out of Colombia without obtaining an export permit and imported it into the United States.

After bringing the Monstrance to the United States, Uhart contacted Petitioner-Claimant James Newton

("Newton"), a San Antonio art dealer. Newton had known Uhart since 1976 and had engaged in a number of business dealings with him since that time. (R. 16-21.)[1] Uhart had telephoned Newton from Colombia to discuss the Monstrance some six months to one year before importing the Monstrance into the United States. (R. 25 and 29.)

In October, 1982, Newton and Uhart signed a written agreement giving Newton the right to earn a 20% commission on the sale of the Monstrance. Uhart agreed to give Newton limited possession of the Monstrance for one year for the purpose of attempting a sale, in exchange for Newton's making a confidence deposit of $200,000 which would be returned when Newton returned the Monstrance.[2] In connection with this transaction, Uhart signed a document certifying that *Uhart* was the "sole owner" of the Monstrance. Newton made several attempts to sell the Monstrance, and in this connection the Monstrance was inspected by Dr. Nan Kelker, Curator of Pre-Columbian and Spanish Colonial Art at the San Antonio Museum of Art. When Dr. Kelker asked Newton whether Colombian Customs had approved the export of the Mon-

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[1] All Record references are to the trial court proceedings held on September 6 and 9, 1985. Selected portions of those proceedings together with certain trial exhibits are reproduced at the end of this Brief. All Appendix references are to the Appendix in Newton's Petition.

[2] Newton delivered the $200,000 confidence deposit to Uhart in the form of two cashier's checks, one for $135,000 and one for $65,000. However, after Uhart acknowledged receipt of the two checks, he immediately returned the $65,000 check to Newton to satisfy a $65,000 debt that Uhart owed Newton in connection with several prior business transactions between the two men. (R. 80-81; Def. Ex. I; R. 78, 79.)

strance, Newton told Dr. Kelker that, although it was "all taken care of," she should not make any inquiries in Colombia regarding the Monstrance. Newton further advised Dr. Kelker not to publicize the Monstrance nationally while it was on display at the San Antonio Museum of Art. (Appendix 29a.)

Based on her conversation with Newton, Dr. Kelker became concerned that the Monstrance was "hot." As a result of Dr. Kelker's further investigation and her communications with the United States Customs Service, United States Customs officials determined that the customs declaration used to import the Monstrance into the United States contained materially false statements and they seized the Monstrance. (Appendix 28a.) Thereafter, the United States initiated a proceeding to forfeit the Monstrance. Uhart was charged with and indicted for fraudulent importation of the Monstrance, but is presently a fugitive from justice. (Appendix 10a and 29a.) Uhart has also been convicted of fraud in the Federal Republic of Germany, of swindling in Switzerland, and is a fugitive on an arrest warrant issued in Colombia. (Appendix 29a.)

Although Uhart did not return to the United States to file a claim in the forfeiture proceedings, he has communicated several times by letter and telephone with Newton about the status of those proceedings since they were initiated. (R. 104-106.) Newton has not reported these conversations to any law enforcement authority despite his admission that he knew Uhart was a fugitive from justice. (R. 106.) However, Newton filed a claim in the forfeiture proceedings asserting that he was "an innocent acquirer for value and without notice." The Republic of

Colombia also filed a claim and participated fully in the proceedings below.

Early in the action, the United States moved to strike Newton's claim on the ground that, because he was not the true owner of the Monstrance, he lacked standing to contest its forfeiture. After denying the Government's motion on the ground that the relevant facts were in dispute, District Court Judge H.F. Garcia ordered an evidentiary hearing to determine the issue of Newton's standing. At the hearing, Newton claimed that he was an innocent "bona fide purchaser" of the Monstrance, and that the documents entered into between him and Uhart had resulted not in a brokerage agreement, but in a sale. The trial court found that Newton was merely Uhart's broker for the purpose of selling the Monstrance, and dismissed Newton's claim. There being no one left before the court challenging the forfeiture, the district court awarded the Monstrance to the United States.[3] The Fifth Circuit Court of Appeals affirmed. *United States v. One*

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[3] The Republic of Colombia offered no evidence in support of its claim in the district court because the Attorney General of the United States, in a separate proceeding, granted the petition for remission filed by the Republic of Colombia pursuant to which it was determined that the Monstrance would be returned to the Republic of Colombia in the event that the United States prevailed in the forfeiture proceeding. (Appendix 36a.) As a result, the Republic of Colombia conditionally withdrew its claim in the district court and did not oppose the forfeiture. (R. 43-45.) (September 9, 1985 hearing.) However, the district court held that in the event that its judgment is remanded by a higher court, the claim of the Republic of Colombia will be automatically reinstated without further court order so that the Republic of Colombia may participate in any proceedings on remand. (Appendix 21a.)

The Republic of Colombia also participated as a party in briefing and oral argument before the Fifth Circuit.

18th Century Colombian Monstrance, 797 F.2d 1370 (5th Cir.), *reh'g denied,* 802 F.2d 837 (5th Cir. 1986) (Appendix 1a-19a).

SUMMARY OF ARGUMENT

The district court properly required Newton to establish his standing at a pretrial evidentiary hearing. Standing is a preliminary issue, and this Court has never held that a trial court may not require evidence when the relevant facts relating to standing are in dispute.

Furthermore, the cases cited by Newton on the standing issue which allegedly conflict with the Fifth Circuit Court of Appeals' decision in this case are based on entirely different facts. The Fifth Circuit Court of Appeals' decision in this case is consistent with decisions of other circuits considering similar facts in civil forfeiture actions.

Last, Newton has not been deprived of property without due process by the conduct of the forfeiture proceedings. Because he was properly denied the right to participate in the forfeiture proceedings, and because he has not challenged the trial court's findings that he had no legal or equitable interest in the Monstrance, he had no constitutional rights with respect to those proceedings.

ARGUMENT

I.

The District Court Properly Held a Pretrial Evidentiary Hearing to Determine the Preliminary Issue of Newton's Standing.

Newton suggests that the district court erred in ordering a pretrial evidentiary hearing on the issue of Newton's standing, but instead should have accepted Newton's allegations of ownership at face value. In support of this argument, Newton cites decisions of this Court holding that litigants must allege facts sufficient to show they have standing. The requirement that a litigant allege certain facts, however, does not limit a court to considering only those allegations when those allegations are in dispute. This Court has held that standing is clearly a preliminary matter, and that a district court should not reach the merits of an action if a party has no standing to raise the merits. *Juidice v. Vail*, 430 U.S. 327, 331-32 (1977). In fact, in *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n.15 (1973), this Court suggested that a pretrial evidentiary hearing is a proper means to resolve disputed facts relating to standing. This Court stated in *SCRAP* that even though the district court in that case did not err by failing to take evidence on the issue of standing, the defendants could have requested an evidentiary hearing on standing if they believed the facts underlying the plaintiffs' standing allegations were in dispute.

The district court's decision to conduct a pretrial evidentiary hearing on standing is not novel. Courts in the First, Third, and Fifth Circuits have required such hearings. *See Munoz-Mendoza v. Pierce,* 711 F.2d 421, 425-26 (1st Cir. 1983); *United States v. $364,960 in United States*

Currency, 661 F.2d 319, 326 (5th Cir. Unit B 1981); *Doherty v. Rutgers School of Law-Newark*, 651 F.2d 893, 898 (3d Cir. 1981); *NAACP, Boston Chapter v. Harris*, 607 F.2d 514, 526 n.15 (1st Cir. 1979). Newton has made no principled argument for his assertion that a pretrial evidentiary hearing would be improper to determine an issue that this Court has expressly held should be determined before reaching the merits. The district court properly held a pretrial evidentiary hearing to determine the disputed issue of Newton's interest in the Monstrance.

II.

The District Court Properly Found That Newton Was Not the Owner of the Monstrance.

Newton contends that he is an innocent owner or good faith purchaser of the Monstrance and that he therefore has a defense to its forfeiture under this Court's decision in *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974). (Newton Petition 5.) He bases his ownership claim on his own self-serving testimony given at the evidentiary hearing on standing that he bought the Monstrance from Edward Uhart for his own account, that he borrowed the money to make the down payment, and that he paid all of the interest and some principal on the note. (Newton Petition 6 and 9.)

The district court did not, however, credit Newton's ownership claim and in a detailed decision filed September 13, 1985, Appendix 39a-44a, found that "[Edward] Uhart was the owner of the monstrance and that Newton was merely his broker or consignee." (Appendix 42a.) See also Findings of Fact No. 11a filed September 27, 1985 (Appendix 26a). Indeed, the contract extension agree-

ment which Newton signed and which he acknowledged contains the only documentary evidence of his alleged ownership (R. 165-166) has attached to it a certificate from Edward Uhart which certifies that *Uhart is the sole owner of the Monstrance.* The Court of Appeals reviewed this same documentary evidence and found no error in the trial court's finding of fact that Newton was not the owner of the Monstrance. As the Court of Appeals stated:

> A trial court's finding that a claimant is not the owner of property is a finding of fact, conclusive unless clearly erroneous. The documents produced create only a brokerage or consignee relationship between Newton and Uhart in which Uhart remained the owner of the Monstrance and Newton paid him $200,000 in order to retain possession of the work, the right to attempt to negotiate a sale, and the opportunity to earn a commission. Nothing in the record raises serious doubt about the correctness of the district court's finding that legal title to the Monstrance was retained by Uhart.

(*See* Appendix 15a.)

Newton does not contend in his Petition that the district court's findings of fact on the ownership of the Monstrance were clearly erroneous. Accordingly, Newton's argument that he is an innocent owner within the meaning of *Calero-Toledo* and that he was deprived of his property without due process of law presents no appellate issue for review by this Court. Supreme Court Rule 23(1)(c). *Cf. Lewis v. City of Grand Rapids,* 356 F.2d 276, 278 (6th Cir. 1966), *cert. denied,* 385 U.S. 838 (1966); *McCraw v. United Ass'n of Journeymen & App. of Plumbing, etc.,* 341 F.2d 705, 710 (6th Cir. 1965). But even if Newton had properly challenged in this Court the

findings of fact in the courts below, this Court has repeatedly held that it is not "a court for correction of error in fact finding" and "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." *Graver Manufacturing Co. v. Linde Air Products Co.*, 336 U.S. 271, 275 (1949). No such obvious and exceptional show of error is even claimed, let alone made out in this case. Furthermore, in cases involving concurrent findings of two lower courts, this Court has held that such findings will be accepted by this Court without reexamination of the underlying evidence. *Allen v. Trust Co. of Ga.*, 326 U.S. 630, 636 (1946).

In short, Newton has not raised a due process claim that is properly reviewable in this Court. The courts below found as a matter of fact that he had neither a legal nor an equitable interest in the Monstrance. Those findings are not challenged on appeal as clearly erroneous. So long as those findings remain undisturbed on appeal, they undermine any due process claim Newton might otherwise possess.

III.

The District Court Properly Found that Newton Lacked Standing to Contest the Forfeiture of the Monstrance.

Newton also claims that he has standing to contest the forfeiture of the Monstrance even if the district court was correct in holding that he did not own it. (Newton Petition 6.) Newton argues that he should have been allowed to contest the forfeiture because (1) he had a substantial financial stake in the Monstrance and (2) he had possession of the Monstrance at the time it was

seized by customs officials. (Newton Petition 6 and n.3, 8.) He claims that the Fifth Circuit improperly required him to be an owner of property in order to have standing to contest a forfeiture and that this "ownership" requirement conflicts with decisions in other circuits which supposedly allow standing based on possession of the seized property. (Newton Petition 10-12, 17.)

A close reading of the cases shows, however, that there is nothing out of the ordinary in the decision below and any supposed conflict is more apparent than real. Newton's assertion that no circuit court of appeals other than the Fifth Circuit imposes limitations on standing in forfeiture actions more stringent than those imposed by Rule C(6) of the Supplemental Rules of Civil Procedure for Certain Admiralty and Maritime Claims, is simply wrong.[4] Courts following a long, consistent, and unquestioned line of cases have always required that a party seeking to challenge a forfeiture as a "claimant" demonstrate a legally sufficient property interest in the seized item. *Baker v. United States*, 722 F.2d 517, 518 (9th Cir. 1983); *United States v. Five Hundred Thousand Dollars*, 730 F.2d 1437, 1439 (11th Cir. 1984); *United States v. $364,960 in United States Currency*, 661 F.2d 319, 326 (5th Cir. Unit B 1981); *United States v. One 1945 Douglas C-54*

[4] Contrary to Newton's suggestion, Rule C(6) does not establish the full extent of standing requirements under the forfeiture statutes. Rule C(6) is a procedural rule only, *United States v. One Gray Samsonite Suitcase Model 200*, 637 F. Supp. 1162, 1166 (E.D. Mich. 1986), and does not purport to modify the substantive law relating to forfeiture under the applicable forfeiture statutes. This is apparent from the fact that Rule C(6) was adopted in 1966 and numerous courts of appeals in subsequent decisions have continued to require a claimant to demonstrate a property interest in the seized item. *See* text below.

(DC-4) Aircraft Serial Number 22186, 604 F.2d 27, 28 (8th Cir. 1979), *after remand*, 647 F.2d 864 (8th Cir. 1981), *cert. denied sub nom. Stumpff v. United States*, 454 U.S. 1143 (1982); *United States v. Fifteen Thousand Five Hundred Dollars ($15,500) United States Currency*, 558 F.2d 1359, 1360 (9th Cir. 1977); *The W. Talbot Dodge*, 15 F.2d 459 (S.D.N.Y. 1926). Despite Newton's assertions, no circuit has dispensed with this requirement for standing.

A. Newton never had a property interest in the Monstrance itself; all he ever had was a contingent interest in the proceeds of any sale and an interest in the return of his security deposit.

Newton makes much in his Petition of his large financial stake in the Monstrance. However, as found by the Fifth Circuit, he never had a legal or equitable interest in the Monstrance itself. (Appendix 17a and 49a.) As a broker, all he ever had was a contingent interest in earning a commission from the sale of the Monstrance and in the return of his $200,000 security deposit. Under existing case law in other circuits, neither interest is sufficient to confer standing in a forfeiture case.

In *United States v. Five Hundred Thousand Dollars*, 730 F.2d 1437 (11th Cir. 1984), the Government seized $900,000 in currency that was alleged to be the proceeds of an illegal drug operation and later obtained a default judgment forfeiting the currency to the United States. Approximately eight months after the decree of forfeiture was entered, one Fernandez, a money changer, moved to set aside the default judgment. Fernandez contended that he had transferred $900,000 in pesos to the prior owners of the funds in reliance on a representation that $900,000 in dollars had been transferred to his New York bank

account. He claimed to have standing to contest the forfeiture because: (1) he would have earned a commission on making the exchange from dollars to pesos, and (2) he was the owner of $500,000 of the $900,000 because the wire transfer order had been made out at the time the funds were seized even though the funds had not been actually transferred. The Court of Appeals rejected both arguments. It held that Fernandez never submitted any evidence "showing he actually bought the $900,000 seized with the $900,000 he apparently expended." 730 F.2d at 1440. The Court concluded by saying:

> Fernandez may well have a chose in action against either the people to whom he disbursed the $900,000 in pesos, or the people who represented to him that the wire transfer had taken place. *He has no interest in the seized funds sufficient to confer upon him standing to reopen the default judgment, however.*

Id. (emphasis added).

Similarly, in this case, Newton may well have a claim against Uhart both for the return of the security deposit[5] and for the lost commission because it was Uhart's violation of the customs laws that defeated Newton's opportunity to earn a commission. However, these collateral and contingent interests do not constitute a sufficient property interest in the Monstrance itself to confer standing to contest its forfeiture.

A similar result was reached by the Ninth Circuit in *Simons v. United States,* 541 F.2d 1351 (9th Cir. 1976), and *United States v. Fifteen Thousand Five Hundred Dollars ($15,500) United States Currency,* 558 F.2d 1359 (9th

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[5] However, as of the date of the trial court proceedings, Newton had not even asked Uhart for the return of his security deposit. (R. 148-49.)

Cir. 1977). In *Simons*, the alleged claimant was denied standing to contest the forfeiture of an automobile even though he had co-signed the promissory note that financed the automobile and was likely to incur substantial financial loss because of the forfeiture. His "interest" was too remote to give him standing because it was an unsecured debt and conferred upon him "no legal title or lien interest in the automobile." *Simons,* 541 F.2d at 1351.

Similarly, in *Fifteen Thousand Five Hundred Dollars,* a claimant was denied standing to contest the forfeiture of currency taken from her safety deposit box because she would state only that she was the signatory on the safety deposit box and paid fees for its opening, not that she was the owner of the currency itself. The Ninth Circuit held that in all cases where standing is allowed "the real party in interest claims some interest in the seized article or merchandise itself." 558 F.2d at 1360. Assertion of an interest only in the storage of the seized article was found insufficient. *See also United States v. One 1945 Douglas C-54, etc.,* 647 F.2d 864, 865-66 (8th Cir. 1981) (receipts for money expended on storage and maintenance of aircraft, receipts for rental of equipment to repair aircraft, and receipts for $10,000 deposit toward the purchase price of aircraft held insufficient to confer standing where other evidence showed superior ownership claim in another party.)

As these cases demonstrate, other circuits have required claimants to show a legal or equitable interest in the seized article or merchandise itself and have consistently denied standing to claimants who could show nothing more than an interest in a commission to be earned from the sale of the article or the existence of an un-

secured debt involving the article.[6] Contrary to Newton's assertions, the Fifth Circuit did not require him to prove that he was the owner of the Monstrance; it did, however, require him to show that he had a legal or equitable interest in the Monstrance itself, something he was unable to do. (Appendix 48a.) The decision below is not only entirely consistent with existing case law in other circuits where courts have resolved competing claims to the same property,[7] but is eminently sound. If every person with some contingent or collateral interest in a seized article could contest its forfeiture, including bailees, repairmen, unsecured creditors and brokers, the forfeiture laws could never be effectively enforced.

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[6] The position of most circuits that the "interest" must be in the article or merchandise itself is also consistent with the language of the statute. 19 U.S.C. § 1608 provides in pertinent part that "Any person claiming such vessel, vehicle, aircraft, merchandise or baggage may ... file with the appropriate customs officer a claim stating his interest *therein*." (Emphasis added.) The Circuit Courts are therefore on sound statutory ground in requiring claimants to show an existing interest in the merchandise itself rather than a collateral interest in the proceeds of a sale or in a related security deposit.

[7] *See United States v. One 1945 Douglas C-45 (DC-4) Aircraft, Serial Number 22186,* 604 F.2d 27 (8th Cir. 1979), *after remand,* 647 F.2d 864 (8th Cir. 1981), *cert. denied sub nom. Stumpff v. United States,* 454 U.S. 1143 (1982); *United States v. One 1977 36 Foot Cigarette Ocean Racer,* 624 F. Supp. 290 (S.D. Fla. 1985); *United States v. One 1981 Datsun 280ZX,* 563 F. Supp. 470 (E.D. Pa. 1983); *United States v. One 1971 Porsche Coupe Auto., V.I. No. 9111100355,* 364 F. Supp. 745 (E.D. Pa. 1973); *The W. Talbot Dodge,* 15 F.2d 459 (S.D. N.Y. 1926).

B. Physical possession alone does not confer standing where there is substantial evidence that a person other than the claimant is the true owner.

Newton also complains of the Fifth Circuit's ruling that "mere physical possession is not sufficient to confer standing to contest forfeiture." (Appendix 48a.) (Newton Petition 10.) He relies on *dicta* in decisions from other circuits for the proposition that mere physical possession of the Monstrance at the time of seizure is sufficient to confer standing. However, Newton's cases are not in conflict with the decision of the Fifth Circuit below.

In *United States v. 1982 Sanger 24' Spectra Boat,* 738 F.2d 1043 (9th Cir. 1984), the Government sought forfeiture of a 24-foot boat under statutes dealing with narcotics offenses. Two claimants contested the forfeiture but declined to make any statement regarding ownership of the boat on the ground that such statements might tend to incriminate them with respect to pending criminal charges against them. The Government moved to strike the claims on the ground that the claimants had no standing because they did not assert any ownership interest in the boat, and the district court, without allowing claimants to respond to the Government's motion, granted the motion and struck the claims. The Ninth Circuit reversed saying in *dictum* that a lesser property interest such as possession creates standing and remanded the case to the trial court to give the claimants an opportunity to allege "the specific property interest they have in the properties." 738 F.2d at 1047.

The *1982 Sanger* case is not in conflict with the Fifth Circuit's decision in this case. To begin with, the *1982 Sanger* case does not constitute a holding that mere physical possession of the boat at the time of seizure

would have conferred standing on the claimants. All the Ninth Circuit actually did in that case was give the claimants an opportunity to allege facts short of actual ownership to support their claim. What these facts would be and whether the circuit would then find them sufficient is not disclosed by the opinion.

Furthermore, there is no indication in the case that there was any person other than claimants who had a superior claim to the boat. All indications are that the claimants were also the owners, but could not say so for fear of incriminating themselves in the pending criminal prosecution. *1982 Sanger* is therefore not a case like this one where any presumption of a legal or equitable interest in the property that may be derived from the fact of possession was overcome by substantial evidence that a person other than the claimant was the true owner. As the Fifth Circuit said in the case below, however:

> Any presumption of ownership he enjoyed due to the fact that the Monstrance was seized from his possession was overcome by the clear meaning of the contract he and Uhart signed.

(Appendix 48a-49a.) *1982 Sanger* is therefore distinguishable from the case at bar and presents no clear conflict because (1) it was resolved at the pleading stage without any development of the facts and (2) there was no evidence that any person other than the claimants had a superior interest in the property.

United States v. One Hundred Twenty-Two Thousand Forty-Three Dollars ($122,043) in United States Currency, 792 F.2d 1470 (9th Cir. 1986) (hereinafter referred to as the *Meixner* case), is also distinguishable. In that case, the claimant, Cynthia Meixner, was arrested for currency

reporting violations as she attempted to board an airplane to Peru with $60,000 in unreported United States currency. When the Government filed a complaint alleging two counts of civil forfeiture as to the currency, Meixner contested the forfeiture on the grounds that the currency belonged to her husband, that she did not know that she was required to report currency that was not hers, and that the Government had therefore failed to prove an element of the offense, namely, her "knowing" violation of the reporting requirements. The district court granted the Government's motion for summary judgment on the ground that claimant was not the owner of the currency. However, the Ninth Circuit reversed because Meixner had demonstrated a possessory interest in the currency and under the circumstances separate proof of ownership was not required.

The *Meixner* case is distinguishable from this case on several grounds. First and most importantly, *Meixner* involves the forfeiture of currency. Where currency is involved possession is almost tantamount to ownership.

> . . . possession of money vests the title in the holder, as to third persons dealing with him, and receiving it in due course of business, and in good faith, upon a consideration good as between the parties. [Citations omitted.] This rule has grown up from the necessity of giving security and certainty to business transactions, for *money has no earmarks by which it may be distinguished, and its source of title cannot be traced as can that of a chattel or chose in action.*

Sutherland v. St. Lawrence County, 101 A.D. 299, 91 N.Y.S. 962, 965 (N.Y. App. Div. 1905) (emphasis added). Therefore, the federal courts have held that "[t]he seizure of property *from someone* is *prima facie* evidence

of that person's entitlement, particularly when the seized property is money — negotiable instruments difficult to identify and trace." *United States v. Wright,* 610 F.2d 930, 939 (D.C. Cir. 1979) (footnote omitted) (emphasis in original). This presumption that physical possession of currency is tantamount to its ownership generally prevails in the absence of any adverse claim. *See United States v. Palmer,* 565 F.2d 1063, 1065 (9th Cir. 1977) ("We conclude that in absence of any cognizable claim of ownership or right to possession adverse to that of appellant, the district court should have granted appellant's motion and returned to him the money taken from him by government seizure."). The *Meixner* case is therefore nothing but a specific application of a rule peculiarly applicable in currency cases. It does not demonstrate that the Ninth Circuit is at odds with the Fifth Circuit in cases involving chattels rather than currency where there is strong evidence, as there was in this case, of a superior claim to the same property.

Secondly, the Ninth Circuit in *Meixner* did not itself believe it was acting contrary to decisions in the Fifth Circuit. This is shown by the fact that the Ninth Circuit cited a Fifth Circuit currency case as consistent with its own ruling. *See United States v. One Hundred Twenty-Two Thousand Forty-Three dollars ($122,043) in United States Currency,* 792 F.2d 1470, 1473 n.5 (9th Cir. 1986), *citing United States v. $364,960 in United States Currency,* 661 F.2d 319, 326 (5th Cir. Unit B 1981). The Ninth Circuit is therefore not aware of any conflict with the Fifth Circuit as urged by Petitioner herein.

Finally, the Ninth Circuit has yet to confront a case like this one in which conferring standing on the basis of mere physical possession would have the effect of putting

the claimant in a better legal position *vis-a-vis* the Government than the true owner. Conferring standing on Cynthia Meixner had no such effect since she was the person perpetrating the offense. In this case, however, allowing Newton standing on no better ground then his physical possession of the Monstrance at the time of seizure would put him in a better legal position to contest the forfeiture under *Calero-Toledo v. Pearson Yacht Leasing Co.,* 416 U.S. 663 (1974), than Uhart, the true owner, since Uhart could not claim innocence with respect to the customs violation. Moreover, given the longstanding business relationship between Newton and Uhart and their prior communications about this case, there is every reason to believe that if Newton is allowed to contest the forfeiture and prevails, Uhart will share in the benefits of that success. Such an anomaly would significantly undermine the effective enforcement of the forfeiture statutes by creating a whole new category of "strawmen," namely, naked possessors. Yet, as the court stated in *United States v. One 1977 36 Foot Cigarette Ocean Racer,* 624 F. Supp. 290, 293 (S.D. Fla. 1985), "[t]he 'strawman' strategy helps mask the actual ownership. In addition, it makes it easier for the nominal owner to assert the 'innocent owner' defense in a forfeiture proceeding." [8] It is not at all clear that the Ninth Circuit would take a position on this issue contrary to the Fifth Circuit's ruling below. This Court would be ill advised to grant certiorari in

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[8] Newton's statement that the Government has an "alternative remedy" against Uhart, Newton Petition 16, makes no sense in the context of this case. Where, as in this case, the "true owner" against whom the Government has an "alternative remedy" is a fugitive from justice, the remedy is entirely empty. In short, the price for restoring Newton's mere right of possession is to deny the Government any relief at all.

anticipation of an alleged conflict among the circuits that may never arise. [9]

It is important to realize that the courts below did not ignore the effect of Newton's possession of the Monstrance at the time of seizure, but instead refused to give it a controlling significance in light of other evidence showing a superior claim in another party. "Even if Newton was initially entitled by virtue of his claim to possession of the Monstrance to be presumed its owner, *the Government fully rebutted that presumption.*" (Appendix 14a) (emphasis added). The ruling is fully consistent with the position taken by other circuits in similar cases. *See United States v. LaFatch,* 565 F.2d 81 (6th Cir. 1977), *cert. denied sub nom. LaFatch v. MM Corp.,* 435 U.S. 971 (1978); *United States v. Wright,* 610 F.2d 930, 939 and n.39 (D.C. Cir. 1979); *United States v. $11,580 in United States Currency,* 454 F. Supp. 376 (M.D. Fla. 1978). Accordingly, no conflict presently exists among the circuits that necessitates intervention by this Court. Any differences that do exist can probably best be worked out by the circuit courts themselves.

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[9] The cases Newton cites from other circuits are equally inappropriate. *See United States v. Five Hundred Thousand Dollars,* 730 F.2d 1437, 1439 (11th Cir. 1984); *United States v. $3,799.00 in United States Currency,* 684 F.2d 674, 678 (10th Cir. 1982). Not only do these cases also involve the forfeiture of currency, but the claimants in both cases were *denied* standing to contest the forfeiture. The cases are therefore no support for Newton's position and certainly do not conflict with the holdings of the courts below.

C. Even if the standing issue might have been decided differently in another circuit, the ruling below was correct because the courts will not entertain the claims of a fugitive from justice or one who derives his claim therefrom.

Even if the standing issue might have been differently decided in another circuit, it would not change the result in this case since the courts below could have properly refused to hear Newton's claim under this Court's decision in *Molinaro v. New Jersey*, 396 U.S. 365 (1970). In *Molinaro*, this Court dismissed an appeal by a criminal defendant who was a fugitive from justice at the time his case came before the Court. While the defendant's status as a fugitive did not strip his case of its character as a justiciable case or controversy, this Court held that it disentitled the defendant to "call upon the resources of the Court for determination of his claims." 396 U.S. at 366.

The *Molinaro* doctrine has been extended to civil proceedings generally, *see Conforte v. Commissioner*, 692 F.2d 587 (9th Cir. 1982), and specifically to civil forfeiture proceedings. *See United States v. $129,374 in United States Currency*, 769 F.2d 583 (9th Cir. 1985), *cert. denied sub nom. Geiger v. United States*, ____ U.S. ____, 88 L. Ed. 2d 901, 106 S. Ct. 863 (1986); *United States v. $45,940 in United States Currency*, 739 F.2d 792 (2d Cir. 1984). *But see United States v. $83,320 in United States Currency*, 682 F.2d 573 (6th Cir. 1982). Furthermore, in *United States v. $129,374 in United States Currency*, *supra*, the Ninth Circuit applied the *Molinaro* doctrine to bar the claim of a conservator of the estate of a fugitive from justice. In that case, Gerald Geiger (Gerald), the brother of Lewis Geiger (Lewis), the convicted fugitive, attempted to chal-

lenge the Government's efforts to forfeit currency, motor vehicles and other paraphernalia used in connection with certain drug offenses. Gerald was not only the conservator of the convicted defendant's estate, but was also a cosurety on the bail bond which had been forfeited when the defendant failed to appear for a sentencing hearing. In denying the conservator the right to contest the forfeiture of property owned by Lewis, the Ninth Circuit held that:

> The conservator's claim is solely derivative of any claim or defense that Lewis may maintain. If the fugitive is deprived of presenting any claim or defense in this action as a result of his fugitive status, the conservator of his estate must suffer the same consequences when he seeks to advance the same claim or defense.

769 F.2d at 587.

In this case, it is undisputed that Uhart, the owner of the Monstrance, is a fugitive from justice. (Newton Petition 3 n.1.) It is also undisputed that any and all of Newton's rights derive from his contracts with Uhart, that Uhart has the greatest amount at stake in these proceedings,[10] that Uhart has tried to keep the contract between him and Newton alive by voluntarily extending the contract period by "the exact number of days during which the Monstrance is withheld from you following its

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[10] Newton's contention that he has a greater financial stake in these proceedings than Uhart, Newton Petition 6 and n.3, mischaracterizes the issue. Since all parties agree that the Monstrance has been appraised at over $3 million, Newton Petition 6 and Appendix 5a, Uhart's financial stake in the outcome of this proceeding is $3 million, not the $110,000 he initially paid for the Monstrance, and is therefore much greater than Newton's.

seizure,"[11] that Newton has never sought the return of his security deposit,[12] and that the two men are in communication about these proceedings. Accordingly, if Uhart as the owner of the Monstrance would be denied the right to contest its forfeiture so long as he remained a fugitive, Newton, who is merely Uhart's agent or broker and who derives all of his rights from Uhart, should also be denied the right to contest the forfeiture. If this is correct, then the result in the court below would not be changed by the resolution of any alleged conflict among the circuits on the standing issue. In that event, it would not seem appropriate to issue a writ of certiorari in this case even if a conflict among the circuits on the issue of standing in forfeiture cases actually existed since this Court would be likely to decide this case on other grounds and the conflict would be irrelevant to the ultimate outcome of the case. *See* Stern, Gressman & Shapiro, *Supreme Court Practice*, § 4.4 at 201-02 (6th ed. 1986), *discussing Monrosa v. Carbon Black, Inc.*, 359 U.S. 180, 184 (1959) and *Sommerville v. United States*, 376 U.S. 909 (1964).

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[11] Uhart wrote Newton a letter in November of 1983 expressing his regrets for the difficulties caused by the seizure of the Monstrance. In that letter, Uhart stated, "I hereby formally extend the initial option period established in our Contract Agreement dated October 29, 1982, by the exact number of days during which the monstrance is withheld from you following its seizure." (Def. Ex. L; R. 93-96.)

[12] (R. 148-49.)

IV.

The Proceedings Resulting in the Forfeiture of the Monstrance to the United States Did Not Deprive Newton of Property Without Due Process.

Newton argues in his second point that the conduct of the forfeiture proceedings after his dismissal deprived him of due process. Specifically, Newton complains of the agreed judgment between the United States and the Republic of Colombia, the application of the "relation-back" doctrine by the district court, delay by the Government in instituting the proceedings, and the United States Attorney General's denial of Newton's petition for remission. Newton's claims are groundless, and, even grouped together, do not constitute a deprivation of property without due process.

The district court gave Newton the opportunity to present evidence supporting his allegations that he has a property interest in the Monstrance. The trial court considered the evidence, found that Newton lacked a legally sufficient property interest in the Monstrance to permit him to contest its forfeiture, and dismissed him from the action. The Fifth Circuit Court of Appeals affirmed the trial court's decision. As discussed above, the courts below properly denied Newton the right to contest the forfeiture. Because Newton had no right to participate in the forfeiture proceedings, he has no right to complain of the conduct of those proceedings.

One properly denied the right to participate in a proceeding does not have the rights of a party and has no right to appeal the merits of the underlying action, but only the order denying the right to participate. *United States v. South Bend Community School Corp.*, 710 F.2d 394 (7th Cir. 1983), *cert. denied sub nom. Brookins v.*

South Bend Community School Corp., 466 U.S. 926 (1984) (group whose intervention was properly denied had no standing to appeal merits of decision adopting consent decree); *Commonwealth of Pennsylvania v. Rizzo*, 530 F.2d 501 (3d Cir.), *cert. denied sub nom. Fire Officers Union v. Pennsylvania*, 426 U.S. 921 (1976); *Ramos Colon v. United States Attorney for D. Puerto Rico*, 576 F.2d 1, 6 n.10 (1st Cir. 1978) ("[A] party without a cognizable interest to proceed below is disqualified from prosecuting an appeal.").

Where a person making a claim to seized property is found to lack standing to contest the forfeiture, he may not appeal the entry of a default judgment, nor is he entitled to notice of the forfeiture proceedings, *United States v. Five Hundred Thousand Dollars*, 730 F.2d 1437 (11th Cir. 1984); *United States v. All That Tract & Parcel of Land*, 602 F. Supp. 307 (N.D. Ga. 1985); he may not challenge the constitutionality or construction of the statute under which forfeiture is sought, *United States v. One 1945 Douglas C-54 (DC-4) Aircraft, Serial Number 22186*, 604 F.2d 27 (8th Cir. 1979), *after remand*, 647 F.2d 864 (8th Cir. 1981), *cert. denied sub nom. Stumpff v. United States*, 454 U.S. 1143 (1982); he may not challenge the burden of proof requirement of 19 U.S.C. § 1615, the probable cause for issuance of a search warrant, or whether the statutory factual prerequisites for forfeiture have been met, *United States v. Fifteen Thousand Five Hundred Dollars ($15,500) in United States Currency*, 558 F.2d 1359 (9th Cir. 1977); he may not assert that his constitutional rights have been violated by delay in the forfeiture proceedings, *United States v. $11,580 in United States Currency*, 454 F. Supp. 376 (M.D. Fla. 1978); and he may not challenge the Government's assertion of probable cause for the forfeiture, *United States v. United States*

Currency Amounting to Sum of $30,800.00, 555 F. Supp. 280, 282-83 n.2 (E.D.N.Y. 1983), *aff'd,* 742 F.2d 1444 (2d Cir. 1983).

Having been properly excluded from participating in the forfeiture proceedings, Newton had "no constitutional rights in this matter that [he] may claim have been violated." *United States v. $11,580 in United States Currency,* 454 F. Supp. 376, 381 (M.D. Fla. 1978). His assertions of impropriety in the district court's entering judgment in accordance with an agreed order and in applying the "relation-back" doctrine of *United States v. Stowell,* 133 U.S. 1 (1890), as well as his assertions of delay, are therefore not properly before this Court.[13]

Additionally, the district court's decision did not depend in any way on an application of the *Stowell* doctrine. First, the district court expressly declined to apply *Stowell* in connection with its ruling on Newton's standing. (Appendix 44a.) Secondly, even on the merits, the application of *Stowell* (Appendix 37a) was not necessary to the district court's decision since no other claimant was before the court and default judgment was therefore appropriate. *See, e.g., United States v. Five Hundred Thousand Dollars,* 730 F.2d 1437 (11th Cir. 1984); *United States v. All That Tract & Parcel of Land,* 602 F. Supp. 307 (N.D. Ga. 1985); *United States v. One (1) 1980 49-foot Defender Yacht Lobster Vessel,* 566 F. Supp. 106 (S.D. Fla. 1983).

Newton also attacks the denial by the United States Attorney General of Newton's petition for remission. This

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[13] Furthermore, Newton's arguments relating to the *Stowell* doctrine and to delay in commencing the forfeiture action were not even raised in his Fifth Circuit appeal.

issue, like the *Stowell* issue, is not properly before this Court because Newton has never appealed the denial of his petition for remission. Moreover, the administrative consideration of a petition for remission "[does not] afford a claimant the full panoply of due process rights inherent in a judicial proceeding," *Ivers v. United States,* 581 F.2d 1362, 1371 (9th Cir. 1978), and the exercise of the Attorney General's discretion is not reviewable by the courts. *United States v. One 1972 Mercedes-Benz 250,* 545 F.2d 1233, 1236 (9th Cir. 1976); *United States v. United States Currency in the Amount of $2,857.00,* 754 F.2d 208 (7th Cir. 1985).

Newton was not deprived of due process by delay, by the district court's application of the *Stowell* doctrine, by the entry of judgment pursuant to an agreed order, or by the Attorney General's denial of his petition for remission. Because he was properly denied standing to participate in the forfeiture proceedings, he had no due process rights with respect to those proceedings.

CONCLUSION

This Court should not review this case. The circuit courts are not divided on the issue of standing in forfeiture cases. The proceedings resulting in the forfeiture of the Monstrance to the United States did not deprive Newton of property without due process. The Republic of Colombia respectfully requests that James Newton's Petition for Writ of Certiorari be denied.

ROBERT E. GOODFRIEND, P.C.

of Akin, Gump, Strauss, Hauer & Feld
4100 First City Center
1700 Pacific Avenue
Dallas, Texas 75201-4618
(214) 969-2800

Attorneys for The Republic of Colombia

CERTIFICATE OF SERVICE

I, Robert E. Goodfriend, a member of the Bar of the Supreme Court of the United States, hereby certify that I have served the foregoing Brief of Respondent Republic of Colombia in Opposition to Petition for Writ of Certiorari on counsel for Petitioner and counsel for the United States Government, by depositing same in the United States mails, postage prepaid, on this 23rd day of March, 1987, addressed to:

MR. JAMES LUKIN DROUGHT
MS. PATRICIA J. SCHOFIELD
Brite, Drought, Bobbitt & Halter
2400 InterFirst Plaza
San Antonio, Texas 78205

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530

By _____
Robert E. Goodfriend, P.C.

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1986

JAMES W. NEWTON,
Petitioner,

THE UNITED STATES
OF AMERICA, et. al.
Respondents

No. 86-1232

AFFIDAVIT OF FILING BY MAIL

I, ROBERT E. GOODFRIEND, a member of the Bar of the Supreme Court of the United States, being first duly sworn on my oath, depose and state as follows:

I received a copy of James Newton's Petition for Writ of Certiorari on January 22, 1987. To my knowledge, the Brief of Respondent Republic of Colombia in Opposition to Petition for Writ of Certiorari was placed in a sealed envelope, with first-class postage prepaid, and properly addressed to the clerk of the Supreme Court of the United States, and deposited in a United States post office on March 23, 1987, which time is within the time allowed for filing, pursuant to an extension of time granted by letter from Francis J. Lorson dated February 18, 1987.

Robert E. Goodfriend

STATE OF TEXAS }
COUNTY OF DALLAS }

Subscribed and sworn to before me this 23rd day of March, 1987, to certify which witness my hand and seal.

Notary Public in and
for Said County and State

SELECTED RECORD EXCERPTS AND TRIAL EXHIBITS

(THE FOLLOWING RECORD EXCERPTS AND EXHIBITS ARE TAKEN FROM THE PROCEEDINGS IN THE TRIAL COURT DATED SEPTEMBER 6 AND 9, 1985.)

SELECTED RECORD EXCERPTS FROM HEARING BEFORE THE HONORABLE H. F. "HIPPO" GARCIA

September 6, 1985

[16]

Q Other than traffic citations, have you had any criminal charges filed against you?

A No, sir.

Q I want to talk to you for a moment about your association or knowledge of a gentleman by the name of Edwardo Uhart.

You know him, do you not?

A I do.

Q For how many years up to today have you known Mr. Edwardo Uhart?

A It's been approximately nine years, I would say, since 1975 or 1976 when I first heard of the man.

Q All right.

When did you meet him for the first time?

A I met him after he telephoned me from New York that he was coming through Texas and that he did indeed have a painting that I was interested in. He would like to come to my office and meet me.

Q Do you recall approximately what year that was, Mr. Newton?

A I believe that was 1976.

Q All right, sir.

Now, describe, if you would, this initial transaction that you had with Mr. Uhart in connection with this painting?

A Yes, sir; I had been interested in a medieval painting that had been offered for sale at Sotheby's in London for which I had a catelogue. I had bidded — underbid on the piece, and

[17]

I had lost the sale, and I wrote to a Mr. Smith who was then director — excuse me. I called Mr. Smith who was then the director of Sotheby's and requested that if he could contact the successful purchaser that I would appreciate being put in contact with the man.

Q All right.

And was it through that that you were put in contact with Mr. Uhart, the successful purchaser?

A Yes, sir; when he called, he stated that he had received my letter which was nearly a year later, but the letter had caught up with him at his Barcelona gallery. And he stated that he had — that he still had the painting and that he would consider negotiations.

Q And did you ultimately buy that painting from him?

A Yes, sir; I did.

Q And was that transaction with Mr. Uhart handled informally or did you have attorneys draw up purchase documents or agreements?

A There were no purchase documents or agreements. It was — I would say informally, yes.

Q Sotheby's is one of the world's most prominent art galleries?

A Yes, sir; I would say they are.

Q Did they impart to you any derogatory information about Mr. Uhart when you contacted them?

A No, they did not.

[18]

Q All right.

Now, did you come to learn at or near that time what Mr. Uhart did? What his business or profession was?

A Yes, sir; he explained to me that he had a gallery in Barcelona.

Q He — he owned what, an art gallery?

A It was an art gallery of primitive art.

Q In Barcelona, Spain?

A In Barcelona, Spain, yes.

Q And do you have an idea, Mr. Newton, how long Mr. Uhart had owned an art gallery in Barcelona, Spain?

A I have seen photographs of the gallery and it was very impressive. I have no idea when he first opened it.

Q All right.

Did you come to meet Mr. Uhart's partner in the Barcelona, Spain art gallery?

A Yes, sir. Some years later he did travel through San Antonio and he did contact me.

Q All right.

And was his partner a director of the museum in Spain?

A Yes. He was a former director of the museum in Barcelona, Spain.

Q And was it a prominent museum?

A Yes, sir; it was.

Q You had lived there for some time, had you not?

[19]

A I had studied there, yes, sir.

Q And you were familiar with the museum?

A I was.

Q Did Mr. Uhart travel quite a bit, Mr. Newton, at that time?

A Yes, sir.

Q What else did he do?

A Well, he was constantly following the art market. He was following the galleries. He did travel and he did maintain an apartment in Paris which was one of his addresses on his letterhead. And he did pursue the market. He went to London consistently for the auctions that were scheduled in England.

Q Was he in the business of buying art pieces if he found them and imported them or exported them?

A Yes, sir; I would say he was.

Q All right.

Now, had you an occasion during — prior to 1981, to do any other business with Mr. Uhart other than the one painting that you mentioned?

A Yes, sir. There was various trades and exchanges, I would say. I saw some of his pieces. He particularly liked a few small objects that I had in my home, and there were other trades.

Q All right.

About how many pieces would you estimate, Mr. Newton, that you had prior business dealings with Mr. Uhart on?

[20]

A Oh, I would say under ten, possibly nine pieces — seven pieces were exchanged.

Q All right.

For a monetary value of approximately how much money?

A Well, that would be difficult to say because most of these pieces were pieces of Spanish, French, European origin, and they were antique pieces. And since they were — they were exchanges, they were trades between the two of us. It would be difficult to say the exact monetary value. I would say it was approximately — probably, if they were actually put on the market for auction, it would be under twenty-five or $30,000.

Q All right, sir.

In connection with the painting that you purchased from him, what was the name of the painting?

A Well, it wasn't named. It was anonymous painting that was done approximately about 1480, late 15th century. It was a printish painting and the subject was the crown of thorns. It was from the school of Hieronymus

Bosch which was a celebrated painter in Spain. He was actually Flemish, but he was in major collection and it was very reminiscent of his style. There was — paintings from that age generally are not known or signed. It is only of a type of school he had been associated.

Q Well, in connection with that transaction with Mr. Uhart, did you find the painting that you bought from him to be authentic?

[21]

A Yes, sir; I was satisfied. Completely satisfied. It had been in Sotheby's and it was authenticated to be a 15th century painting.

Q All right, sir.

Did you find it to be a valuable painting?

A It was valuable to me because it was an area that I was particularly interested in — the period of time which I am interested in.

Q Well, my point is, was there any difficulty associated with that prior transaction with Mr. Uhart concerning that painting that would cause you to be suspicious of him or think he was a shady character or anything of that nature in connection with the way he did business with you?

A None whatsoever.

Q Did he keep his word to you in price and quality of objects that you traded with him?

A Very definitely.

Q During the period, say, of 1979 or so to 1982, how many times a year would you see Mr. Uhart in person?

A Well, that would depend. He generally would call if he was coming through Texas. He was always interested in the museums and culture here if he were travelling from New York to California or going from New York to Mexico or South America — if he was coming through San Antonio, he would generally notify me in advance and tell me approximately he would be here.

* * *

[25]

stipulate to that. It arrived at JFK Airport on that date.

MR. WHEATLEY: We will prove that up later, your Honor.

Now, having seen it come into this country, Mr. Newton, on February 24, 1981, with that date in mind, I want you to try to fix a point roughly when you first heard of the monstrance prior to its date of import — approximate time period?

A Well, it was probably six months to a year earlier that Mr. Uhart called me.

Q All right.

And what did he say to you?

A Well, he described the piece as a religious art which was made of gold and encrusted with some 1500 jewels that was to be, I believe he said, made available on the market. And he wanted to know if I would be interested.

Q All right.

Did he relate anything more substantial to you to describe the piece at that time?

A Not really, other than it was a piece of the eighteenth century and was Spanish Colonial.

Q Do you recall what words he used to describe it, Mr. Newton, the monstrance, chalice, or —

A — Yes, sir; he called it in the Spanish term of custodia which is the term used or which is the same term as monstrance in French which describes the piece as holder of the host.

* * *

[29]

of this monstrance into the United States?

A No, I did not.

Q Did you hear from Mr. Uhart again concerning this monstrance prior to the time that it was imported into this country?

A I'm sorry.

Q Did you hear — let me rephrase that: Did you hear from Uhart again concerning this monstrance until after it was already imported into this country?

A No, sir; I did not.

Q All right.

And if we all agree that February 24 was the date in 1981 when it came in, tell the Judge, if you would, following that date, when was the next time you heard from Mr. Uhart about this piece?

A Yes, sir. Mr. Uhart called me probably within a month after the piece had been brought into this country. He reminded me by telephone that he referred to the

earlier call and referred to the piece that he had mentioned approximately a year earlier and stated that he had since purchased the piece. And he had imported it into the country, and he felt that because of the glamour and history of the piece that I should really reconsider and have a look at it.

Q. All right.

And was this a personal visit with Mr. Uhart or telephone

* * *

[78]

to Mr. Uhart to a New York bank — to a sister bank with certain additional documents that required signing.

Q Did Liberty Frost Bank use Chase Manhattan Bank in New York for that purpose?

A Yes, sir; they did.

Q I now hand you what has been marked as Defendant's Exhibit I and ask you if these are the documents in fact which Liberty Frost wrote to Chase Manhattan Bank in an effort to transmit the funds to Mr. Uhart?

A Yes, sir; these are the documents that accompanied payment.

Q Now, what Liberty Frost sent to Chase Manhattan — well, excuse me, your Honor. First of all, I move into evidence Defendant's Exhibit I consisting, for the record, of six pages.

MS. MATHY: Your Honor, may I ask the witness about these documents?

THE COURT: Yes, ma'am.

MS. MATHY: Mr. Newton, did you receive a copy of this December 1982 letter by Michael Dippo that was written?

A No.

MS. MATHY: Did you obtain this packet of documents from the bank files?

MR. NEWTON: No.

MS. MATHY: How did you come in possession of this December 1982 letter?

MR. NEWTON: Well, I was leaving for Montana at that

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time to spend Christmas with my family, and this transaction was left as a normal banking transaction with Liberty Frost Bank. These were copies that they had and made, and when they consummated the transaction, they gave me the letters upon my return. They gave me the entire dossier, I should say.

MS. MATHY: Your Honor, the United States has no objections to the admissions of these exhibit into evidence. Although this was not produced earlier by a subpoena.

MR. TAYLOR: No objections, your Honor.

THE COURT: Will be received into evidence.

(Defendant's Exhibit I admitted)

MR. WHEATLEY: Now, let's discuss briefly these documents, Mr. Newton. Let me give you a copy to — may I borrow back one of those copies, please?

The Liberty Frost, Mr. Michael Dippo, vice-president, sent to Chase a certificate — a list of documents to be signed by Uhart, is that correct?

A That's correct.

Q Including a certificate of ownership and look through here as we go with the Court and look at the next to the last page. Is that called certificate of ownership?

A Yes, sir.

Q Evidencing that Uhart was in fact the owner and there was no claim against the monstrance at that time, is that correct?

A That's correct.

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Q Number two, acknowledgement regarding deposit. Do you see the second document in that package called acknowledgement, is that the document?

A Yes, sir.

Q And, then, thirdly, there is a contract agreement extension. Do you see that document in the packet?

A Right.

Q And, then, as I read this letter, there was to be endorsed a $65,000 check to James W. Newton upon when Mr. Uhart receives a check for $135,000, do you see that in the letter?

A Yes, sir.

Q Now, that totals $200,000, is that correct?

A That's correct.

Q What was the $65,000 item, Mr. Newton, if you would be kind enough to explain that?

A Yes, sir. The $65,000 consisted of debt that was owed to me previously by Edward Uhart in which he agreed to pay for or he agreed to pay at the time he received cash in this country.

Q Okay.

Was it for art objects or other items that you had bought or sold or traded with him?

A The largest portion of this, $50,000, was return for payment of a painting that had never been released by a family.

Q All right.

Now, what was the other 15,000 for?

[81]

A The other 15,000 consisted of various items — the difference of various items that had been traded back and forth between the two of us and which he agreed upon the additional amount that was still outstanding on his account.

Q Was this transaction, then, used to clear at that time some of these transactions with Mr. Uhart?

A Yes, sir; it was used to clear all of them.

Q All right.

Now, on the last page of this exhibit, Mr. Newton, there are two cashier's checks, do you see those?

A Yes, sir.

Q From Mercantile Bank to Edward Uhart.

A Right.

Q One is for $135,000 and another is for $65,000, is that correct?

A Yes, sir.

Q And how was Mr. Uhart to return to you the cashier's check for $65,000 so that you all would be square on your account?

A He was to sign for the checks at the Chase Manhattan and per instructions, he was to return the check to New York — the Chase Manhattan was to return the check to me through my bank. That is, they were to sent this check back to Liberty Frost where they would deposit it in my account.

Q Okay. Very good.

* * *

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MR. TAYLOR: Your Honor, this letter —

MR. WHEATLEY: They may contend they are surprised by the contents of it, but —

MR. TAYLOR: This letter is dated November 25, 1983, and it is before the seizure took place. The letter is not between client and his lawyer. It is a letter from Mr. Uhart to Mr. Newton.

MR. WHEATLEY: It is after the seizure, Counsel.

MR. TAYLOR: After the seizure. Okay, I take it back. Before the lawsuit but after the seizure, and I think it violates the discovery rule and we object to it on that basis.

THE COURT: Well, I am going to overrule the objection and let it in.

(Defendant's Exhibit L admitted)

MR. WHEATLEY: Now, let's look at this letter for a moment, Mr. Newton. I want to — "Dear Jim. I wish to express to you my sincerest regrets for the difficulties which you have been caused these past months about the Great Monstrance of the Santa Clara Convent of Tunja. These troubles should not have occurred at all because there was nothing wrong about the monstrance when we made our contracts, and there is nothing wrong about it now.

"All of the trouble about the monstrance, I believe, can be laid at the feet of a U.S. Customs official in New York, Mr. Charles Koczka. Based on what has happened to me, I am sure

that he has no regard for the rights of others. I believe that in the case of the monstrance he has resorted even to going outside the law to bring pressure to bear illegally on myself, persons near me, and even including the presidency of Colombia.

"As I have always told you, I bought the monstrance in Colombia in 1981. I did so with assurance that the sale was legal. I even obtained from the convent a document signed by the Abbess, reflecting that the sale had been

approved by the Colombian government as well as the Catholic Church. This is the document which I delivered to you with the monstrance.

"You should also know that it is true as declared in the Colombian press by Monsignor Trujillo Arango, that the monstrance was sold to me because there was no money in the convent, but there was no one in Colombia, even the government, who would offer the price that I paid.

"When I brought the monstrance into the U.S.A. immediately after my purchase, I turned over the entire matter of Customs to the broker. I am sure that he did nothing intentionally wrong even if someone in his office later made the clerical error of saying, 'Bogota, Spain'; an error which I thought was completely cleared up back in 1981.

"Even though I did nothing wrong, I have my responsibility to you as my customer to make sure that the burden on you is minimized. You, who received the monstrance in good faith and

[95]

made your option payment in full compliance with our contracts, should not suffer.

"To alleviate somewhat the inconvenience which this trouble has caused to you, I hereby formally extend the initial option period established in our contract agreement dated October 29, 1982, by the exact number of days during which the monstrance is withheld from you following its seizure. In other words, instead of your obligation being to make the second confidence deposit on December 16, 1983, one year from the date of the initial deposit, the due date for that confidence deposit payment is

postponed by the number of days from the date of the seizure on January 20, 1983, to the date on which the monstrance is returned to you by the U.S. Government. This extension is made without effect on your rights established by our agreements."

And is that Mr. Edward Uhart's signature on that paper?

A Yes, sir.

Q All right.

THE COURT: Mr. Wheatley, aside from that last paragraph, there is nothing that has to do with Mr. Newton — with Mr. Newton's standing.

MR. WHEATLEY: It does to this extent. If the Government was going to contend that Mr. Newton was somehow not a good faith purchaser which they said in their briefs, or that somehow he was negligent, if they are going to contend that,

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this letter is relevant to that. But, at this time, your Honor, until they contend that, I am more willing to not to offer it — any portion of this letter except the last two paragraphs.

THE COURT: That will be received into evidence. Let's go.

(Defendant's Exhibit L admitted)

MR. WHEATLEY: Now, Mr. Newton, as we have seen about two months after you have made this agreement with Mr. Uhart, the monstrance was seized by U.S. United States Customs, was it not?

A Yes, sir; it was.

Q Was it seized while it was in your possession at the San Antonio Museum?

A Yes, it was.

Q And was it seized at gun point by Customs officials?

A Finally, yes, it was.

Q Were there two agents there that held a gun on you and Mr. Steve Cristel (phonetic) who was there with you?

A There were two agents who were there. I don't know who the additional personnel was who came in with the others. There were three other individuals, to my recollection.

Q And did the United States Customs agent at that time take and remove from you from your person certain documents that you had in your possession?

A Yes, sir; the entire packet of documentation that I carried with the monstrance.

* * *

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THE COURT: You may proceed, Mr. Wheatley.

MR. WHEATLEY: Thank you, your Honor. At this time we will rest our testimony of Mr. Newton.

THE COURT: All right. You may cross examine, Ms. Mathy.

MS. MATHY: Yes, your Honor.

CROSS EXAMINATION

BY MS. MATHY:

Q Mr. Newton, this morning I believe you testified that you have known Mr. Uhart about nine years, is that right?

A That's correct.

Q Now, I know from Exhibit L that you received correspondence from Mr. Uhart since the time it was seized by Customs. Have you spoken with him on the telephone since the time of seizure?

A Yes.

Q And approximately how many times?

A I really don't remember.

Q Can you give us —

A It has been infrequent.

Q Infrequently. So, that means less than five?

A I really can't remember. It's been three years. It has not been very often and he has called from various points when there has been a conversation.

Q It has not been three years since the seizure, Mr. Newton.

Have you telephoned Mr. Uhart or has Mr. Uhart telephoned

you?

A As I said, he has always called me. I did not know where Mr. Uhart is.

Q Have you talked with Mr. Uhart in the last year?

A Yes, I have.

Q Then Mr. Uhart has telephoned you within the last year?

A Yes, ma'am.

Q Have you talked about his indictment in the Western District of Texas?

A No, I have not.

Q Does Mr. Uhart know that he has been indicted?

A I assume he does.

Q But you don't know for a fact that he knows?

A No, I never have discussed it with him.

Q Have you discussed whether or not he was going to come back and file a claim and contest this forfeiture?

A No.

Q Have you ever asked him if he was coming back or come back and contest this forfeiture?

A No, I haven't, Ms. Mathy.

Q You haven't perhaps asked him to come back and file a claim to support your claim?

A No.

Q Is Mr. Uhart if you — is he under the impression that you are going to represent Mr. Uhart in his interest with respect

to this forfeiture action?

A No.

Q So, exactly what did you talk — you didn't talk with him about his indictment and that is something of note. You didn't talk about him coming back to file a claim — what are you talking about with Mr. Uhart on the phone?

A Well, primarily, he has called and asked if there had been any significant advances towards the return of the monstrance and since nothing has happened, and we have not gotten into Court, I really had nothing to tell him.

Q Now, you knew that Mr. Uhart had been indicted, right?

A Yes, I did.

Q Do you know that Mr. Uhart is a fugitive from justice?

A Yes, I do.

Q Have you reported any of your contacts with Mr. Uhart to any law enforcement authority of the United States?

A To a law enforcement authority?

Q Yes. Have you reported those telephone calls to the United States Customs Service?

A No, I haven't.

Q Have you reported any of those phone calls to the United States Marshal?

A No.

Q Have you reported any of those phone calls to any other law enforcement agency of the United States?

* * *

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Line fourteen. Question: "Do you have any recollection about the approximate value of the monstrance might have been at the time you entered into those agreements on the loan of $200,000 to Mr. Newton?"

Answer: "You mean the value as far as art piece or the values as far as a broken down values?"

Question: "Either one. Any kind of value at all and then you tell me how you value — which value you are talking about?"

Answer: "When an art piece is valued is whenever someone will pay for it. Consensus at that time, I believe, was in excess of a million as an art piece. As a melted down piece, I want to say $250,000."

Question: "What was the basis of your approximation of the melt-down or the salvage price?"

Answer: "I believe Bud — "

Q Are you referring to Mr. McGrath?

A I think so.

Answer: "I believe Bud got that from some jeweler here in town."

A They had both seen this letter, Ms. Mathy.

Q Again, for the record, the questioning in that transcript was by Mr. Taylor.

Now, Mr. Newton, am I correct that you haven't demanded the return of the $200,000 from Mr. Uhart, is that right?

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A You are correct.

Q And you haven't demanded of him, am I also correct, or am I wrong? You haven't demanded the return of the $200,000 from Mr. Uhart because this Exhibit L, this letter to you from Mr. Uhart dated November 25, 1983 that we learned about this afternoon? Is that the reason why because of what Mr. Uhart told you in that letter?

A No, that is not the reason why.

Q Well, the way I read and maybe you should get it in from of you, Mr. Newton — this is Exhibit L. The way I read the last paragraph on page two, and I will wait until you have located it before I ask you the question.

A All right.

Q When I read this last paragraph, is that Mr. Uhart is extending the initial option period, quote, "initial option period," unquote, i.e., in quote, "contract agreement dated October 29, 1982", end quote. So that in effect, you don't have to put up any additional monies on the contract extension agreement or make any kind of a demand at all because he is kind of frozen things there for you — is this what this is about?

A He has extended the period of time for the amount of number of days that it has been detained by U.S. Customs, that is correct.

Q No further questions, your Honor.

* * *

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Q This Exhibit J which includes your contract, this was the document that you presented to your guarantors, was it not, to show ownership?

A No. sir. That is one I had drawn up because of their suggestion or agreement that we would have one drawn up.

Q What I am saying, there, the only written document that you had in your possession that talks about ownership of the monstrance, is a certificate that shows Uhart is the owner.

A In shows that he was the owner at the time of sale to me, yes.

Q Are there any other written documents you have that states that you are the owner?

A Yes, sir.

Q Would you show them to me, please?

A The contract of sale which states that there is $200,000 that I put up for purchase.

Q That's purchase — is there anything in there —

A Two hundred thousand dollars was put down for purchase, yes. That is purchase. I would consider that ownership.

Q All right.

That was the deposit for the purchase, right?

A It was a down payment — deposit.

Q That's enough. Just one more question.

Is there any document that you have that states that you are the owner?

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A None other than the contract of sale.

Q So the only document that you have that shows or indicates ownership is the certificate that Mr. Uhart signed, is that correct?

A If you are referring to the contract; yes, sir, that is correct.

Q I am referring to the fact that the only document that states who the owner of the monstrance is — who the owner of the monstrance is, is a certificate signed by Edwardo Uhart and was prepared by you, is that a correct statement?

A (Pause) I don't have but only the contract of sale, Mr. Taylor, which I put down $200,000. I do not have a bill of sale from him. I have not completed payment on the piece, as you know. If you are asking if I have a release or bill of sale or that this contract has been paid in full, no, I do not have one.

Q Are you making a claim here on behalf of Edwardo Uhart?

A For what?

Q For the monstrance.

MR. WHEATLEY: Asked and answered about thirty minutes ago.

MR. TAYLOR: I don't recall his answer.

MR. NEWTON: No, I don't represent Mr. Uhart.

Q I will pass the witness.

MR. WHEATLEY: May we confer for just a moment, your

SELECTED RECORD EXCERPTS FROM
HEARING BEFORE THE
HONORABLE H.F. "HIPPO" GARCIA

September 9, 1985

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questions.

Number one, Claimant James Newton has filed a motion to stay this trial pending his appeal to the Fifth Circuit. The United States has to be in opposition of that request for stay and is ready and willing to proceed with the trial of this matter.

The second thing I would like to address in the status call is that in an attempt to streamline the proof at the hearing, I have approached Counsel for the Republic of Colombia in an effort to enter into stipulations so that this hearing might go forward on stipulated evidence. The Republic of Colombia is agreeable in doing so. As this Court knows, there's been extensive pre-trial discovery in the matter and what we might do is incorporate portions of depositions that have already been taken in this case.

I am now going to defer to Counsel for the Republic of Colombia whom I know has a statement which he wishes to make to you.

MR. TAYLOR: Your Honor, before I proceed, I would like to introduce Mr. Bill McCue from the firm of Burke

and Burke from New York City who is co-Counsel for the Republic of Colombia.

As the Court knows, in the prior hearing on the motion to dismiss Mr. Newton's claim for lack of standing, the Court has dismissed Mr. Newton's claim. At this point, the claim of

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the Republic of Colombia is really been mute. Because under the terms and conditions of the agreement between the United States of America and the Republic of Colombia, the United States of America has agreed to remit the monstrance to the Republic of Colombia. The Republic of Colombia hereby requests the Court to allow it to conditionally withdraw its claim based on the following agreements and conditions.

One, that U.S.A. has agreed to remit the monstrance to the Republic of Colombia in the event it is forfeited. This agreement renders the claim of the Republic of Colombia mute. In consideration of the United States of America has agreed to remit the monstrance to the Republic of Colombia, the Republic of Colombia agrees that U.S.A. should not be required to remit the monstrance until the final disposition of all claims.

They further agree, that is that the Republic of Colombia has agreed to allow the monstrance to be displayed in the San Antonio Museum of Art for a period of at least three months on terms and conditions to be negotiated between the Republic of Colombia and the San Antonio Museum of Art.

The Claimant James Newton has expressed an intention to appeal the dismissal of his claim and the forfei-

ture. In the event that judgment of the forfeiture is reversed and remanded, the Republic of Colombia again requests the Court to permit it to reassert its claim without prejudice. The Republic of Colombia will conventionally withdraw its claim only if the

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written judgment of forfeiture expressly provides that, A, the claim is withdrawn without prejudice, notwithstanding any limitation period.

B, that the claim will be automatically reinstated without prejudice in the event the cause is remanded.

Or, if U.S.A. fails to remit as previously agreed to.

And we are asking the Court to provide in the forfeiture order that we are withdrawing our claim and that U.S.A. has agreed to remit it to us. But in the event that the cause is remanded, we urge that our claim be reinstated and be able to proceed and be able to reassert it. We would so like the Court to provide it in its order.

THE COURT: All right, Mrs. Mathy.

MRS. MATHY: Yes, your Honor.

THE COURT: Lady and gentlemen, we will set it for the 23rd at nine-thirty.

MRS. MATHY: Yes, sir.

THE COURT: And we will pass on the motion at that time.

MS. MATHY: Thank you, your Honor.

THE COURT: The 23rd at nine-thirty.

What does it take to get the thing over here? I want to look at it. (Laughter)

MS. MATHY: I will see if I can get it in Court on the 23rd, your Honor.

SELECTED DEFENDANT'S EXHIBITS FROM HEARING BEFORE THE HONORABLE H. F. "HIPPO" GARCIA

September 6, 1985


DEFENDANT'S
EXHIBIT
A
SA-83-CA-1681

Liberty Frost Bank

December 9, 1982

Chase Manhatten Bank
1 Chase Manhattan Plaza
New York, N.Y. 10081

Attention: Collection Department

Dear Sir,

Please follow the below instructions on what needs to be signed by Mr. Eduard Uhart:

1. Certificate of Ownership.
2. Acknowledgement regarding deposit.
3. Contract extension
4. Endorse $65,000 check to James W. Newton upon which Mr. Uhart receives check for $135,000.

After all documents and check have been signed, please return them to Liberty Frost Bank, P. O. Box 32788, San Antonio, Texas 78284 to the attention of Michael A. Dippo.

If you have any questions regarding these instructions, please contact me.

Regards,

Michael A. Dippo
Vice President

MAD/bh

DEFENDANT'S EXHIBIT I 9-6-85 SA-83-CA-268I

Liberty Frost Bank, National Association 11900 Blanco Road Post Office Box 32788 San Antonio, Texas 78284 512/349-2881

ACKNOWLEDGEMENT

DATED: December , 1982

RE: Contract Agreement by and between Eduard Uhart and James W. Newton Associates, dated October 29, 1982.

Execution of this instrument will serve as acknowledgement of receipt of the funds referred to in the captioned agreement as "Confidence Deposit" in the amount of $200,000.

It is further acknowledged and agreed that any rights of James W. Newton Associates under the captioned agreement are transferable and are specifically assignable to a commercial bank for the purpose of obtaining the aforementioned deposit funds.

This will serve as an addendum to the captioned contract and become a part thereof for all purposes.

Receipt of the $200,000. deposit:

_____ Date: _____
Eduard Uhart

Witness: _____

James W. Newton remittes $$ deposit

CONTRACT AGREEMENT EXTENSION

RE: CONTRACT DATED OCTOBER 29, 1982, BY AND BETWEEN EDUARD UHART AND JAMES W. NEWTON ASSOCIATES, AS AMENDED, WITH REFERENCE TO THE GREAT MONSTRANCE OF SANTA CLARA BY NICOLAS DE BURGOS.

THIS EXTENSION AGREEMENT IS BETWEEN JAMES W. NEWTON ASSOCIATES AND EDUARD UHART, REGARDING EXCLUSIVE RIGHT TO SELL OR PLACE THE GOLD MONSTRANCE OF SANTA CLARA.

THIS AGREEMENT IS MADE REGARDING THE RIGHT TO AN EXTENSION OF AN ADDITIONAL YEAR TO CONSUMMATE SALE PLACEMENT OF SAID MONSTRANCE.

SHOULD A ONE-YEAR TIME EXTENSION BE REQUIRED FROM MR. UHART, IT IS AGREED THAT JAMES W. NEWTON ASSOCIATES PROVIDE THE FOLLOWING:

AN ADDITIONAL CONFIDENCE DEPOSIT OF $150,000.00 PAYABLE TO EDUARD UHART IN EXCHANGE FOR AN ADDITIONAL ONE YEAR.

ALL TERMS OF ORIGINAL CONTRACT REMAIN IN FULL FORCE AND EFFECT BETWEEN JAMES W. NEWTON ASSOCIATES AND EDUARD UHART. WHEN SALE IS CONSUMMATED IT IS AGREED THAT JAMES W. NEWTON ASSOCIATES WILL RECEIVE TWENTY PERCENT OF SALE PRICE, OR $200,000.00 WITH THE BALANCE BEING PAID TO EDUARD UHART IN THE AMOUNT OF $800,000.00

SHOULD SALE OF MONSTRANCE NOT BE COMPLETE WITHIN PERIOD OF EXTENSION CONTRACT, MR. UHART WILL HAVE A PERIOD OF TIME NOT TO EXCEED SIXTY (1) DAYS BEYOND THE EXPIRATION OF THE ONE-YEAR EXTENSION GRANTED BY THIS AGREEMENT IN WHICH TO RETURN THE DEPOSIT MONIES IN EXCHANGE FOR THE RETURN OF THE GOLD MONSTRANCE. IF THE DEPOSIT MONIES ARE NOT RETURNED WITHIN THE TIME PROVIDED, THEN THE MONSTRANCE WILL BECOME THE PROPERTY OF JAMES W. NEWTON AND ASSOCIATES.

DATED: _____

_____
EDUARD UHART

_____
JAMES. W. NEWTON

CERTIFICATE

I, EDUARD UHART, CERTIFY THAT I AM THE LEGAL OWNER OF THE GOLD AND JEWELED MONSTRANCE OF SANTA CLARA, TUNGA, COLOMBIA, MADE BY NICOLAS DE BURGOS.

I FURTHER CERTIFY THAT I AM THE SOLE OWNER OF THIS MONSTRANCE, AND THAT THERE ARE NO CLAIMS OR ENCUMBRANCES AGAINST THIS PIECE. I AGREE TO PERSONALLY INDEMNIFY A PURCHASER AGAINST ANY CLAIMS THAT SHOULD ARISE, OR SHOULD THIS STATEMENT NOT BE TRUE AND CORRECT.

SIGNED

EDUARD UHART

BEST AVA

MERCANTILE BANK

Loop 410 at McCullough
P.O. Box 32267
San Antonio, Texas 78284
(512) 340-5000

Cashiers Check

30-83
1140

№ 206167

Date December 8, 1982 DEC 8 82

Pay To
The Order Of Eduard Uhart

$135,000.00

MERCANTILE I35,000 00 CTS

An indemnity bond will be required before any official check of this bank will be replaced or refunded, in the event it is lost, misplaced, or stolen.

Purchaser James W. Newton Loan Proceeds

Vice Preside
Assistant Cashi

⑈206167⑈ ⑆114000831⑆ 21 088 9⑈

MERCANTILE BANK

Loop 410 at McCullough
P.O. Box 32267
San Antonio, Texas 78284
(512) 340-5000

Cashiers Chec

30-83
1140

№ 2061

Date DEC 8 82

Pay To
The Order Of Eduard Uhart

$65,000.00

MERCANTILE 65,000 00 CTS

An indemnity bond will be required before any official check of this bank will be replaced or refunded, in the event it is lost, misplaced, or stolen.

Purchaser James W. Newton, Loan Proceeds

Vice Presi
Assistant Cash

⑈206168⑈ ⑆114000831⑆ 21 088 9⑈

MR. LUSK'S SECTY.
DIANNA JACKSON
MERCANTILE BANK
SAN ANTONIO

37r

AILABLE COPY

Eduardo Uhart A.

Ave. Santa Maria 1790
Dep. 182 - Tel. 461863
Santiago- Chile

26 BLV - Raspail
Paris 7- Tel. 2225672
France

November 25, 1983

Mr. James W. Newton
7731 Broadway #8
San Antonio, Texas 78209
U. S. A.

Dear Jim:

I wish to express to you my sincerest regrets for the difficulties which you have been caused these past months about the Great Monstrance of the Santa Clara Convent of Tunja. These troubles should not have occurred at all because there was nothing wrong about the monstrance when we made our contracts and there is nothing wrong about it now.

All of the trouble about the monstrance, I believe, can be laid at the feet of a U.S. Customs official in New York, Mr. Charles Koczka. Based on what has happened to me, I am sure that he has no regard for the rights of others. I believe that in the case of the monstrance he has resorted even to going outside the law to bring pressure to bear illegally on myself, persons near me and even including the Presidency of Colombia.

As I have always told you, I bought the monstrance in Colombia in 1981. I did so with the assurance that the sale was legal. I even obtained from the convent a document, signed by the Abbess, reflecting that the sale had been approved by the Colombian government as well as the Catholic church. This is the document which I delivered to you with the monstrance.

You should also know that it is true, as declared in the Colombian press by Monsignor Trujillo Arango, that the monstrance was sold to me because there was no money in the convent, but there was no one in Colombia, even the government, who would offer the price that I paid.

When I brought the monstrance into the U.S.A. immediately after my purchase, I turned over the entire matter of customs to the broker. I am sure that he did nothing intentionally wrong even if someone in his office later made the clerical error of



saying "Bogota, Spain"; an error which I thought was completely cleared up back in 1981.

Even though I did nothing wrong, I have my responsibility to you as my customer to make sure that the burden on you is minimized. You, who received the monstrance in good faith and made your option payment in full compliance with our contracts, should not suffer.

To alleviate somewhat the inconvenience which this trouble has caused to you, I hereby formally extend the initial option period established in our Contract Agreement dated October 29, 1982, by the exact number of days during which the monstance is witheld from you following its seizure. In other words, instead of your obligation being to make the second confidence deposit on December 16, 1983, (one year from the date of the initial deposit) the due date for that confidence deposit payment is postponed by the number of days from the date of the seizure on January 20, 1983, to the date on which the monstrance is returned to you by the U.S. government. This extension is made without effect on your rights established by our agreements.

Sincerely,

Eduardo Uhart

